IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 933 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MANIYABHAI MOHANBHAI - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
MR G RAMAKRISHNAN for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/12/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 23.5.1986 passed by the Assistant Sessions Judge, Vadodara in Sessions Case No.145 of 1984, whereby the Assistant Sessions Judge had acquitted the accused from the offence punishable under Section 376 of the Indian Penal Code.

2. The short facts giving rise to this appeal are such that :

That one Vitthalbhai Lallubhai was residing with his family at Village Tarsana of Dabhoi taluka. He has one daughter by name Anasuya. That one Jivanbhai Bhopabhai was his neighbour who had one son by name Vinu and one daughter by name Champa. It is the case of the prosecution that on 8.6.84, said Anasuya, Champa and Vinu went to fetch milk from village Tarsana and while returning back they planned to eat groundnut from the field of Habib. When they went there, the present accused – Maniya Mohan who was the servant of Habib was present there. It is the say of the prosecution that the said accused ran

after them, caught hold of the victim girm, made her sleep and committed rape on her. On hearing the shouts of victim girl, her brothers Dinesh and Jayendra came there and on seeing them, the accused ran away. Therefore, they went to the police station at Dabhoi in rickshaw and filed the complaint which is at Ex.23.

On the basis of the complaint, the Investigating Officer completed the investigation and filed the charge sheet for the offence punishable under Section 376 of the Indian Penal Code. As the offence under Section 376 was exclusively triable by the court of Sessions, the learned Magistrate committed the case to the Court of Sessions, Vadodara. The Assistant Sessions Judge framed the charge for the offence punishable under Section 376 of the Indian Penal Code against the accused and on the charge being read over to the accused, he pleaded not guilty and claimed to be tried and after recording the evidence and hearing the learned counsel for the parties, the learned Assistant Sessions Judge acquitted the accused for the offence

punishable under Section 376 of the Indian Penal Code against which the present appeal is filed.

4. Heard Mr.K.C.Shah, learned APP for the appellant – State and Mr.G.Ramakrishnan, learned advocate for the respondent – accused.

5. The judgment is challenged on various grounds mentioned in para 5 of the memo of appeal. Mr.K.C.Shah, learned APP has taken us through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

6. The learned trial Judge, while appreciating the panchanama of scene of offence and the situation of the houses of the victim girl and the girl Champa who accompanied the victim girl, came to the conclusion that it is not possible to believe the case as put up by the victim girl before the Court.

7. The learned trial Judge, after appreciating the deposition of Champa who, according to victim girl, was with her at the time of going to the field

of Habib for eating groundnut, came to the conclusion that she is not supporting the case of the prosecution but basing on that it cannot be said that victim girl did not go there with the witness.

8. The learned trial Judge, however, while recording the findings with regard to the injuries found on the body of the victim girl, came to the conclusion that it is natural that the person runs after the children who come to eat groundnuts in the field as the accused did. Further, it is observed that victim girl has stated that the accused raped her and for about 5-10 minutes, she screamed and on hearing her screams, her brothers came there. But, looking to the distance from the house of Vittalbhai to the place of offence, it is not possible for Dinesh and Jayendra to reach at the place of offence even 5-10 minutes as stated by the victim girl. It is further held by the learned Assistant Sessions Judge that if the rape would have been committed as stated by the victim girl, then signs of such rape would be found on the private parts of her body during the medical examination, which is not found. But only

some abrasions are found on her body which are possible in case of her felling down. Therefore, only that there were abrasions on her body, it cannot be said that the accused committed rape on her.

9. While lodging the complaint, an attempt was made to show that the victim girl was of about 12 years but the ossification test and other evidence is sufficient to indicate that she was about 14 years of age means a girl able to understand the impact and the attempt of indecent assault is made by a well developed male. The medical evidence actually does not support the theory of even indecent assault punishable under Section 354 of Indian Penal Code. It is not even possible for the Court to think whether in present case, the accused can be held guilty of the charge of offence punishable under Section 376 read with Section 511 of Indian Penal Code because there were three teenagers who were chased by the accused being intruder in a field with a view to enjoy newly grown groundnuts. A running child or a teenager if fells down on the earth, then the front portion of the body normally would sustain some minor

superfluous injuries when the surface is uneven but not very hard like agricultural land. So, the reasons assigned by the learned trial Judge for not accepting the theory of commission of rape appears to be not only logical but sound.

10. One more aspect that has been considered by the learned Sessions Judge is the medical certificate and the deposition of Dr.Sumanlal Shrimali Exh.13. He has referred about 14 aspects that were considered by him in para 2 of his deposition and we would like to mention six of them. “Breast are not well-developed, Abrasion on medial side of right thigh 0.5 c.m. X 1 c.m., in size, No mark of injury or abrasion over vavla or groin, Hymen present, No discharge seen over valve or over vagina introitns or both rights and No discharge seen over clothes.” These remarks are sufficient to indicate that as such no attempt of either rape or indecent assault probably was made. The residential house of the victim girl was at a very short distance. It was visible from the scene of offence. So the deposition of victim girl before the Court and the complaint appears to be tutored and is

found based on wrong and exaggerated version of the entire incident.

11. In case of Rahimben V/s State of U.P., reported in AIR 1973 SC 343, the Apex Court observed that all facts the innocence of the accused emerges and it cannot be linked with the offence of rape. In this decision, a developed man was charged for rape of a girl aged about 10-12, the hymen was found in tact and there were no injuries found on the male organ. The facts are very similar in the case of hand. Our High Court in case of State of Gujarat V/s Mohammed Usmanbhai Chauhan, reported in 1996(2) GLR 821 has considered the above view of the Apex Court while acquitting the accused. In our case, the victim girl was taken for medical examination in couple of hours even then no signs of rape were seen by the doctor. So, the observations of this Court in case of State of Gujarat V/s Farukhbhai Ahmedbhai Shaikh, reported in 1997(2) GLR 1400 also would help the accused.

12. In view of the above, we do not find any

perversity or illegality in the findings. It is by now settled that when the appellate forum is in agreement with the reasons assigned by the lower court, then it is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence. We are of the opinion that this cannot be said to be rare case where the acquittal is required to be converted into that of conviction.

13. In view of the foregoing discussion, the following order is passed.

14. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(C.K.Buch,J)

(Sharad D.Dave,J)

srilatha